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S. W. 876, 881; *State v. Kysilka*, 85 N. J. L. 712, 90 Atl. 309. Any hearsay danger, moreover, can be obviated by instructions. See *Wright v. Beckett*, 1 M. & Rob. 414, 419; 2 WIGMORE, EVIDENCE, § 1018. In a great many American jurisdictions statutes make these contradictory statements admissible under all circumstances. See 2 MASS. REV. L. 1902, c. 175, § 24; CAL. CODE CIVIL PROCEDURE, 1909, § 2049; 1 IND. REV. STAT., 1914, § 531. Compare 17 & 18 VICT., c. 125, § 22 (1854). It is questionable, however, whether it is wise to dispense with the trial judge's discretion, or to admit the prior statements under any circumstances, where the party never hoped to elicit the truth but was seeking some dramatic effect.

WITNESSES — PRIVILEGED COMMUNICATIONS — PHYSICIAN: WAIVER BY PATIENT'S TESTIMONY CONCERNING PHYSICAL CONDITION. — A statute forbade the examination of a physician as to any "communication made by his patient" or "any knowledge obtained by personal examination of such patient," unless the patient consent or voluntarily testify "with reference to such communications." Though the plaintiff had testified as to his injuries, his objection to the examination of his physician was sustained by the trial court. *Held*, that the ruling is correct. *Arizona & New Mexico Ry. Co. v. Clark*, 235 U. S. 669.

For the patient to offer evidence as to the communication made to a physician is a waiver of the privilege as regards that physician. *Rauh v. Deutscher Verein*, 29 N. Y. App. Div. 483, 51 N. Y. Supp. 985; *Pittsburg C. C. & St. L. R. Co. v. O'Conner*, 171 Ind. 686, 85 N. E. 969. But the offer of the testimony of one physician is not a waiver of privilege as to the testimony of other physicians not present in consultation with him. *Penn Mutual Life Ins. Co. v. Wiler*, 100 Ind. 92; *Barker v. Cumard S. S. Co., Ltd.*, 91 Hun (N. Y.) 495, 36 N. Y. Supp. 256. *Contra*, *State v. Long*, 257 Mo. 199, 165 S. W. 748. See 28 HARV. L. REV. 116. Thus it appears that it is not the purpose of these statutes to keep secret the ailments of the patient, but to protect the communications which he makes to his physician. The knowledge gained by the physician through a physical examination of the patient, as well as what he is told by the patient, constitutes a communication within the meaning of the statutes. *Prader v. National Masonic Accident Ass'n*, 95 Ia. 149, 63 N. W. 601; *Rose v. Supreme Court*, 126 Mich. 577, 85 N. W. 1073. But for the patient to testify as to his symptoms, as in the principal case, without mentioning anything spoken or disclosed to the physician, since it is not giving in evidence any communication made by word or act, is properly held not a waiver of the privilege. *Green v. Nebagamain*, 113 Wis. 508, 89 N. W. 520; *May v. Northern Pacific Ry.*, 32 Mont. 522, 81 Pac. 328; *Williams v. Johnson*, 112 Ind. 273, 13 N. E. 872. *Contra*, *Forrest v. Portland Ry. L. & P. Co.*, 64 Ore. 240, 129 Pac. 1048. But see 4 WIGMORE, EVIDENCE, § 2389. This conclusion receives support from analogous decisions with reference to privileged communications between attorney and client. *State v. White*, 19 Kan. 445; *Bigler v. Reyher*, 43 Ind. 112. *Contra*, *Woburn v. Henshaw*, 101 Mass. 193. See 4 WIGMORE, EVIDENCE, § 2327.

## BOOK REVIEWS

INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION. By A. V. Dicey. Eighth Edition. London: Macmillan and Company, Ltd. 1915. pp. cv, 577, 2.

Students of law and government have long since learned to welcome each new edition of this deservedly famous work, but the eighth edition will be especially appreciated for its introduction. Since Professor Dicey first published this book in 1884 great and far-reaching changes have occurred in the structure of the